

REMARKS

By this Amendment, Claims 1 and 10 were amended and no claims were added or deleted. No new matter has been added by these amendments. As a result, Claims 1-7 and 10-23 are pending in the case.

In the Office Action, the Examiner objected to Claim 1 because of a formality and rejected Claims 1-3, 7, 10 and 14-15 under Section 102(b) as being anticipated by U.S. Patent No. 3,938,441 to Sewell et al. ("Sewell"). The Examiner also rejected Claims 4-6, 11-13 and 16-23 under Section 103(a) as being unpatentable over Sewell in view of U.S. Patent No. 4,616,711 to Johnson ("Johnson").

In response to the Examiner's objection, Applicant has amended Claim 1 to delete the term "either."

In order for a reference to anticipate, the reference must disclose each and every element of the claimed invention. *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 771, 218 U.S.P.Q. 781, 789 (Fed. Cir. 1983). Claims 1 and 10 have been amended to delete the language "removing fuel to create a fire line." Sewell does not disclose the remaining elements of Claims 1 and 10, namely "using an explosive munition to remove burnable material and to perform at least one of the firefighting tasks of a) creating a back burn, or b) mopping-up the wildfire." Put another way, Sewell neither discloses using explosive munition to create a back burn, nor using explosive munition in mop-up operations. Sewell only discloses using a warhead to clear a helicopter landing zone, fire lane, or fire break (column 2, lines 6-9). As Sewell does not disclose each and every element of Claim 1 or Claim 10, it cannot anticipate either claim. Claims 2-3, 7, 14 and 15 depend from Claims 1 and 10 and are, therefore, patentable for the same reasons.

Johnson does not remedy the deficiencies in Sewell. Johnson calls for an aircraft dropping exploding canisters of foam (non-explosive ammunition) to create the back-boundaries/perimeter of the back-burn area. In light of the changes above, applicant believes all of the claims now patentably distinguish over the cited art.

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The Examiner and Commissioner are hereby authorized to charge any additional fees associated with this Response or refund any overpayments associated with this Response to our deposit account, Deposit Account No. 23-0280.

In view of the above, all pending claims are believed to be in condition for allowance; an action to this end is earnestly requested. If it would expedite the progress of this Application through the examination process, the Examiner is authorized to call the undersigned attorney.

Respectfully submitted,

Dated: October 5, 2005

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CERTIFICATE OF MAILING (37 C.F.R. § 1.8a)

I hereby certify that this correspondence is, on the date shown below, being deposited with the United States Postal Service with first class postage prepaid, in an envelope addressed to: Mail Stop Amendment, Commissioner For Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450 on October 5, 2005.



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